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No. 227

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

FEDERAL POWER COMMISSION,
Petitioner,

v.

PAN AMERICAN PETROLEUM CORPORATION, ET AL.,
Respondents.

RESPONDENTS' CONCURRENCE IN PETITION FOR CERTIORARI AND MOTION FOR CONSECUTIVE ORAL ARGUMENTS

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November 30, 1967

(List of Parties and Attorneys Continued on Inside Front Cover)

FIDELITY PRINTING COMPANY, INC., HOUSTON

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RESPONDENTS' CONCURRENCE IN PETITION FOR CERTIORARI AND MOTION FOR CONSECUTIVE ORAL ARGUMENTS

These Respondents have earlier filed a motion[1] wherein it was urged (i) that if the Court should grant the then pending petition of the Federal Power Commission (the "Commission") for certiorari in No. 60, October Term, 1967 (originally No. 1133, October Term, 1966), that certiorari should also then be granted in this case, and (ii) that the two cases (Nos. 60 and 227) be scheduled for consecutive oral arguments. The August 7 motion is reproduced herein as Appendix A, *infra*, to conveniently show the Court without repetition the parties thereto and the contents thereof.

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[1] Respondents' Conditional Concurrence in Petition for Certiorari and Motion for Consecutive Oral Arguments, dated August 7, 1967, hereinafter called "August 7 motion".

The August 7 motion was filed in opposition to the Commission's request that this Court deny these Respondents the right to present written and oral analysis of the Commission's threatened extension of administrative power against them. The Commission's petition, *inter alia*, requests that (p. 7):

> "The petition for a writ of certiorari should be held to abide the Court's *final* disposition of the petition in No. 1133 [No. 60, October Term, 1967]."[2]

Subsequent events (and the inherent lack of fairness and justice in such request of the Commission) compel these Respondents to again urge the Court to allow them to be heard, rather than to be required to sit silently by while the Commission, in other litigation before this Court, argues against them and seeks an adverse adjudication of their rights in their absence.

Since the filing of such August 7 motion, this Court has, on October 9, 1967, granted petitions for certiorari in Nos. 60-62, 80 and 97, each of which involves, *inter alia*, a question similar in purported effect to that presented by the Commission's petition in this No. 227. Further, on the same day, the Court granted petitions for certiorari in Nos. 111, 143, 144 and 231, and consolidated these latter cases for hearing with Nos. 60-62, 80 and 97.

Thus far this Court has not acted upon the petition for certiorari in this No. 227.

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[2] Emphasis supplied.

THE COMMISSION SHOULD NOT BE ALLOWED TO DENY THESE RESPONDENTS THEIR DAY IN COURT

Respondents respectfully submit that by honoring the Commission's request to require these Respondents to sit idly by while their rights are argued against them by the Commission (and others) in other litigation, the Court thus countenances the denial to these Respondents of the full and fair hearing to which they are entitled. Further, by granting the Commission's request, the Court allows the Commission to choose the litigation which it desires be heard for the determination of controversial, material issues. No adversary, be it a governmental agency or a private party, is entitled to such an unfair advantage.

The gas sales here involved are made from the prolific gas producing area of Southern Louisiana, and the questions here presented with respect thereto are of vital, material concern to these Respondents, some of whom are producers that are small in size but with a large monetary stake in the outcome of this litigation. It is, of course, clear that the Commission, if it be successful in its other litigation (Nos. 60, *et al.*), will seek to have the determination made therein imposed upon these Respondents, all to their great detriment. It is submitted that simple fairness and justice require that these Respondents be allowed the right to present *their* views to this Court in an effort to protect *their rights* in *their litigation*. In the court below these Respondents successfully litigated the question presented by the Commission in No. 227, but now face the iniquitous circumstance of being denied even the opportunity of protecting their position.

CONCLUSION

These Respondents seek no more than the effective recognition of their inherent entitlement to be heard in protection of their substantive, material rights. They are entitled to no less. By reason thereof, these Respondents move the Court to grant the petition for certiorari in this No. 227 and schedule consecutive oral arguments with Nos. 60, *et al.*

Respectfully submitted,

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